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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 8th June 2007

No. 7544—Ii/1 (B)-103/1997 (Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th March 2007 in I. D. Misc. Case No. 68/1998 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the management of M/s Bhubaneswar Stock Exchange Association Ltd., Bhubaneswar and its workman Shri Sarbeswar Sahoo was referred for adjudication is hereby published as in the Schedule below:

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 68/1998

Present :

Shri S. K. Mohapatra, O. S. J. S.. (Jr. Br.)
Presiding Officer, Labour Court, Bhubaneswar.

The 30th March 2007

Between :

The management of M/s Bhubaneswar Stock Exchange Association Limited, Bhubaneswar. .. First Party—Management

And

Their Workman Shri Sarbeswar Saheo, Driver. .. Second Party—Workman

Appearances :

Shri A. K. Mishra .. For First Party—Management

Shri S. Sahoo, .. Second Party—Workman himself.

AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the management of M/s Bhubaneswar Stock Exchange Association Limited, Bhubaneswar and their workman Shri Sarbeswar Sahoo, Driver under Notification No. 5323-L. E., dated the 18th May 1998 vide memo No. 8555 (5)-L. E., dated the 12th August 1998 for adjudication by this Court.

2. The terms of reference by the State Government is as follows :

"Whether the termination of Shri Sarbeswar Sahoo, Driver, by way of verbal refusal of employment with effect from the 13th February 1994, by the management of Bhubaneswar Stock Exchange Association Limited, is legal and/or justified ? If not, what benefits he is entitled to ?"

3. The case of the workman namely, Sarbeswar Sahoo in brief is as follows:

The Bhubaneswar Stock Exchange Association Limited, Bhubaneswar (hereinafter referred to as the management) appointed the workman as a Driver on daily wage basis on the 12th January 1993. A muster roll as well as one attendance register was also being maintained for the workman to put his signature. After continuously working as daily wage employee from the 12th January 1993 to the 1st September 1993 as a Driver, the workman was regularised and a confirmation letter was issued to him. As a regular employee, the workman was getting of salary of Rs. 1,163·25 per month besides medical allowance and washing allowance etc. On the 2nd February 1994 the management did not allow the workman to put his signature in the attendance register and the President of the management verbally told the workman not to come to work any further but no written order of termination of service was given to the workman and no reason was assigned to him regarding termination of his service. Since the workman was in continuous service by working for more than 240 days during the period of 12 months preceding the date of his termination from service, the management was legally bound to observe all the formalities laid down under Section 25-F of the Industrial Dispute Act, 1947 (hereinafter referred to as the I. D. Act). Not-withstanding such statutory provisions, the management did not observe the provision of Section 25-F of the I. D. Act. The workman had neither been given one month's notice in writing including reasons for retrenchment, nor he was paid wages for one month in lieu of the notice mandated under Section 25-F of the I. D. Act. The management did not pay any retrenchment compensation to the workman as mandated under Section 25-F (b) of the I. D. Act. The workman has contended that the non-observation of provisions under Section 25-F of the I. D. Act had rendered his retrenchment from service illegal. No Departmental enquiry (proceeding) had been started against the workman before his retrenchment and there was never any enquiry. Being aggrieved because of retrenchment from his service, the workman raised an industrial dispute before the authorities of the Labour Department who tried for a conciliation between the workman and the management and when the same failed, a reference was made to this Court by the State Government for adjudication of the matter.

4. Shorn of all unnecessary details the case of the management succinctly stated as follows:

The workman approached the management for empolyment and even though the management did not have scope for employment for a full time Driver, the management appointed the workman as a causul Driver on daily wage basis. Besides driving the vehicle of the management only sparingly the workman was also been entrusted with odd jobs of the management when he was not required to drive the vehicle. In due course it was found that the workman was addicted to liquor and was found drunk during his duty hour. The management verbally reprimanded and warned on several occasions but there was no improvement on the part of the workman. When the workman assured to maintain his conduct and to leave the bad habit of drinking and made a prayer for regularisation of his job, the management regularised the employment of the workman as a regular Driver with effect from the 1st September 1993. After few days of employment in regular post, the workman reverted back to his old habit of drinking. On the 13th February 1994 the workman was directed to proceed to Air port with the vehicle of the management to bring guests of the management who were coming to Bhubaneswar. On his way to Air port, the workman met with an accident due to which the vehicle of the management was damaged and therefore, the workman failed to perform the duty which had been allotted to him. On returned to the office, when the workman narrated the incident he was found to be fully under the influence of liquor. The management immediately arranged a medical test of the workman by a Doctor who certified that the workman was heavily drunk and was not physically fit to drive a vehicle. For this incident the worman was placed under suspension pending enquiry. Thereafter the workman apprehending disciplinary action against him, absconded from his duty with effect from the 14th March 1994 without applying for any kind of leave. On the 21st March 1994 when the workman came to the office he was told that he had been placed under suspension pending enquiry on the charges levelled against him and was directed to receive the charge-sheet and the suspension order, etc, but the workman refused to receive the suspension order and charge-sheet and left the office. Before leaving the office the workman tampered the

attendance register by marking himself present up to the 24th February 1994. When the management tried to servie the order of suspension and the charge-sheet on the workman through its office Peon, in the local address of the workman, it was found that the workman had left for Kolkata without leaving any address. Several more attempts to serve the order of suspension and the charge-sheet on the workman failed due to absence of the workman in the local address. On these averments the management has sought for rejection of the prayer of the workman regarding reinstatement of his service and payment of back wages.

5. On the above pleadings of the parties, the following issues have been framed: —

ISSUES

i) Whether the termination of Shri Sarbeswar Sahoo, Driver, by way of verbal refusal of employment with effect from the 13th February 1994 by the management of Bhubaneswar Stock Exchange Association Limited, is legal and/or justified ?

(*ii*) If not, what benefits he is entitled to ?

6. The admitted fact in the instant case is that the workman was appointed as a regular Driver by the management on the 1st September 1993 and that he had worked as such till the 13th February 1994. Thus the days for which the workman had worked continuously, as admitted by the management comes to 166 days only. Therefore it is incumbent on the part of the workman to prove that he had worked for at least 240 days during the 12 months preceding to the 13th February 1994 on which date the workman was allegedly retrenched from his service by way of refusal of employment. In the decision Batala Co-operative Sugar Mills Ltd. *Vrs.* Sowaran Singh reported in 2006 (i) LLJ. 12, the Hon'ble Supreme Court at Para. 13 of the Judgment have held that :

13. So far as the question of onus regarding working for more than 240 days is concerned, as observed by this Court in Range Forest Officers. V. S. T. Hadimani AIR 2002 SC 1147 : 2002 (3) SCC 25 : 2002-I-LLJ-1053, the onus is on the workman. It was noted in the said judgment as follows at P. 1054 of LLJ :

"In the instant case, dispute was referred to the Labour Court that the respondent had worked for 240 days and his service had been terminated without paying him any retrenchment compensation. The appellant herein did not accept this and contended that the respondent had not worked for 240 days. The Tribunal vide its Award, dated August 10, 1998 came to the conclusion that the service had been terminated, without giving retrenchment compensation. In arriving at the conclusion that the respondent had worked for 240 days the Tribunal stated that the burden was on the management to show that there was justification in termination of the service and that the affidavit of the workman was sufficient to prove that he had worked for 240 days in a year.

2. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an 'Industry' or not, though reliance i splaced on the decision of this Court in State of Gurarat *Vrs.* Pratamsingh Narinh Parmar 2001 (9) SCC 713 : 2001-I-LLJ-1118. In our opinion, the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was so denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagements for this period was produced by the workman. On this ground alone, the Award is liable to be set aside. However, Mr. Hegde, appearing for the Department states that the State is really interested in getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today."

In view of the ratio decided by the Hon'ble Apex Court in the case Batala Co-operative Sugar Mills Ltd. *V.* Sowaran Singh (*Supra*) it is well settled that onus lies squarely on the workman to prove that he was in continuous service as defined under Section 25-B of the I. D. Act.

7. Now it is to be seen from the record as to whether the workman has discharged his onus. The workman has examined himself as workman's witness No. 1. In his evidence the workman has stated that he first worked as Driver under the management in the year 1993 on a monthly salary of Rs. 1,160 and prior to that he was working as a N. M. R. under the same management from the ye r 1990. According to the workman he become a permanent employee under the management in the year 1993. Further evidence of the workman namely, Sarbeswar Sahoo is that since February, 1995 the management did not pay any salary to him. This evidence of the workman has not been corroborated with any documentary evidence. In his ex mination the workman has admitted that he did not have any document to show that he began his work under the management as N. M. R. in the year 1990. No document whatsoever has been proved by the workman to show that he had worked for 240 days in the 12 months preceding the date of his alleged termination from service. The brother of the workman has been examined as workman's witness No. 2. In his evidence although the brother of the workman has stated that the workman was working as a Driver under the management since the year 1990 till the year 1995 such oral evidence has not been supported by any document. Thus there is no evidence worth the same to show that the workman was in continuous service as defined under Section 25-3 of the I. D. Act. On the other hand, both the M. Ws. 1 and 2 have stoutly denied that the workman had worked for more than 240 days in any year during his tenure of service. Since the workman has signally failed to prove that he was in continuous service as defined un ler Section 25-B of the I. D. Act, the workman is not entitled to the benefits enumerated under Section 25-F of the I. D. Act prior to his retrench ment. The management was legally not bound to follow the provisions under Section 25-F of the I. D. Act as because the workman has signally failed to prove that hewas in continuous service as defined under Section 25-B of the I. D. Act.

8. According to M. Ws. 1 and 2, the workman while driving office vehicle of the management caused one accident and thereafter he left the vehicle on the road and went away. M. W. 1 in his evidence has further stated that the workman has abandoned his service after causing accident of the vehicle of the management. On one hand, there is no proof on the side of the workman that he was coming to do his work after the alleged accident of the vehicle. On the other hand, the workman has failed to prove to be in continuous service as defined under Section 25-B of the I. D. Act. In such a situation the alleged termination of service of the workman by the management with effect from the 13th February 1994 cannot be termed as illegal for non-compliance of the provisions under Section 25-F of the I. D. Act.

9. Therefore, in the facts and circumstances of the case and having regard to the evidence on record it is held that the termination of service of the workman by the management with effect from the 13th February 1994 is legal and justified and therefore, the workman is not entitled to any relief whatsoever.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. MOHAPATRA
30-3-2007
Presiding Officer
Labour Court
Bhubaneswar.

S. K. MOHAPATRA
30-3-2007
Presiding Officer
Labour Court
Bhubaneswar.

By order of the Governor
N. C. RAY
Under-Secretary to Government

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